



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNR, FFT**

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the *Residential Tenancy Act* (the “Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) issued on April 4, 2023, and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on September 1, 2021, when the tenants took possession of the rental unit. Current rent in the amount of \$1,825.00 was payable on the first of each month. A security deposit of \$900.00 was paid by the tenants.

The tenants acknowledged that they received the Notice on April 6, 2023. The tenant JB testified that they had paid rent for March and April 2023 on time; however, they received the Notice relating to unpaid rent that was owed for February 2023.

JB testified that they did not know that their husband (co-tenant) had not paid the rent for February 2023, and that is when they separated. JB stated that their co-tenant nor the landlords informed them of this problem until just before they issued the Notice.

JB testified that the co-tenant has taken full responsibility for the debt.

The landlord testified that this is a joint tenancy agreement. The landlord stated that although the co-tenant vacated they did not end the tenancy, and this has happened in the past and co-tenant continued to pay the rent and then moved back into the rental unit. The landlord stated it the obligation of both tenants to ensure rent is paid.

The landlord agreed that they would extend the effective date in the Notice, to June 30, 2023, subject only if rent is paid on June 1, 2023, and in full.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some of the rent. Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a *10 Day Notice to End Tenancy for Unpaid Rent*.

...

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

In this case, this was a joint tenancy which both tenants are jointly and severally responsible for payment of rent when it is due. Although I accept the co-tenant moved out in February 2023; however, the co-tenant did not end the tenancy and if they had JB and all occupants would be required to vacate the premises. Unless they entered into a new agreement with the landlord, which they did not.

While I accept the tenants' relationship broke down; however, it was the responsibility of the tenants to ensure rent was paid. JB should have asked the landlord or their co-tenant in February 2023 if rent was paid. Clearly by the text messages the landlord was communicating with the co-tenant on payment of the rent.

As of today's date, rent for February 2023, has not been paid by either tenant. Therefore, I dismiss the tenants' application to cancel the Notice.

As the tenants were not successful with their application the tenants are not entitled to recover the filing fee from the landlords.

As the tenants' application is dismissed, I find the landlords are entitled to an order of possession, pursuant to section 55 of the Act.

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

As the landlords have agreed to extend the effective date of the Notice to June 30, 2023, subject to payment of rent due on June 1, 2023. I find it appropriate to grant the landlords an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenants subject to the following.

Should rent for June 2023, not be paid on June 1, 2023, the order is immediately enforceable. If rent is paid as stated above this order is enforceable on June 30, 2023, should the tenants fail to vacate. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

I find the tenants owe the landlord unpaid rent for February 2023, in the amount of \$1,825.00. I grant the landlords a monetary order pursuant to section 55(1.1) and 67 of the Act. This order may be filed in the Provincial Court and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

While the co-tenant indicated they have taken responsibility for the debt; however, both tenants are both jointly and separately liable. This means that the landlord can recover the debt from either party. However, all money received from either party must be accounted for.

Should the above monetary award remain unpaid at the end of the tenancy. The landlord may exercise their rights to retain the security deposit to offset the debt owed in accordance with section 38(3) of the Act.

Conclusion

The tenants' application is dismissed. The landlords are granted an order of possession.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 25, 2023

Residential Tenancy Branch